Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-1029

SAMUEL A. SCARNATO, ET AL.,
Appellants,

versus

HONORABLE MRS. MARY EVELYN PARKER, TREASURER OF THE STATE OF LOUISIANA, ET AL.,
Appellees,

LOUISIANA SCHOOL BOARDS ASSOCIATION AND JEFFERSON PARISH SCHOOL BOARD,
Intervenor-Appellees.

On Appeal from the United States District Court for the Middle District of Louisiana

JURISDICTIONAL STATEMENT

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JURISDICTIONAL STATEMENT

OPINIONS BELOW

The judgment and per curiam opinion of the district court are reprinted in Appendix A, *infra*, and reported at 415 F.Supp. 272 (M.D. La. 1976). The court's minute entry denying appellants' motion for a new trial is reproduced in Appendix B, *infra*.

JURISDICTION

The judgment of the three-judge district court granting appellees' motion for summary judgment and dismissing appellants' complaint was entered on June 15, 1976. The court's minute entry denying appellants' timely motion for a new trial was filed on September 9, 1976. Appellants filed a notice of appeal to this Court (Appendix C, *infra*) on October 29, 1976. The time for docketing the appeal was extended by order of Mr. Justice Powell to January 28, 1977. The jurisdiction of this Court is conferred by 28 U.S.C. §1253.

QUESTION PRESENTED

Whether a statewide school finance statute that is directly linked to concededly arbitrary local property assessments has a rational basis under the Equal Protection Clause of the Fourteenth Amendment simply because there is a possibility that the statutory scheme may be phased out by the 1979-80 school year.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment to the United States Constitution provides in pertinent part:

> No state shall . . . deny to any person within its jurisdiction the equal protection of the laws.

Article VII, Sections 18 and 23, and Article VIII, Section 13(B) - (D) of the 1974 Louisiana Constitution;

Louisiana Senate Concurrent Resolution No. 10 of 1975; Act 16 of the 1975 Regular Session of the Louisiana Legislature; Louisiana Senate Concurrent Resolution No. 89 of 1976; Act 17 of the 1976 Regular Session of the Louisiana Legislature; and excerpts from certain minutes of the Louisiana State Board of Elementary and Secondary Education are set forth in pertinent part in Appendix D, *infra*.

STATEMENT

Appellants are the Orleans Parish School Board and several concerned taxpayers and parents of minor children attending the public schools of Orleans Parish, Louisiana. For themselves, and on behalf of their minor children, appellants instituted this suit on February 10, 1976 in the United States District Court for the Middle District of Louisiana to challenge a state statute that establishes a formula for distributing state funds to local school districts under Louisiana's "minimum foundation program" of public education ("MFP").

In 1973, after deciding *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1 (1973), this Court summarily affirmed the judgment of three-judge district court in Louisiana which held that the Equal Protection Clause "assures equality not only in the imposition but also in the distribution of state revenues." *Levy v. Parker*, 411 U.S. 978 (1973), *aff'g* 346 F.Supp. 897, 903 (E.D. La. 1972). The *Levy* case involved distributions to Louisiana's parishes from the State's property tax relief fund ("PTR" Fund), a fund designed to reimburse local governments for tax

revenues lost because a fixed dollar amount of the assessed value of each taxpayer's home is exempt from taxation.[1] By statute, PTR distributions to each parish were directly proportional to the *ad valorem* tax millage rates of that parish. These tax rates, though superficially reflecting revenues lost to each parish on account of the homestead exemption, in fact were not a meaningful index of lost revenues; independent parish tax assessors could (and did) compensate for high millage rates by an overall manipulation of assessment levels.[2] The court concluded that the statutory scheme at issue had no rational basis and denied equal protection to the *Levy* plaintiffs:

> No reason has been advanced, nor any governmental policy argued, that would support the reimbursement of each Louisiana parish on the basis now in effect. It has not been suggested that the amounts now being paid to any parish are based on its real loss of revenue resulting from the homestead exemption, or on state policy based on any rational geographical or demographic classification, or on any other basis that might constitute coherent governmental policy. Louisiana's appropriations from its PTR Fund are based on no discernible attempt either to classify parishes or even to deal with them on an ad hoc basis one by one.[3]

1 For veterans, $5,000 of assessed value was exempt. For other taxpayers, the homestead exemption, as it is called, was $2,000.

2 "It was possible to increase the parish share of PTR Fund payments, without simultaneously increasing the tax burden on local homeowners, by raising the millage rate on all property while lowering the assessments on property not occupied as a homestead and raising the assessments of homesteads to approach the allowable homestead exemption. The evidence indicates that this was in fact done.

The millage rate in a parish does not now necessarily reflect the severity of that locality's tax burden. At least in some parishes it reflects the degree to which the local authorities have manipulated the several variables determining the tax burden imposed on its residents. The millage-times-assessment-any-basis-you-choose formula for distributing state funds is, in a word, arbitrary. It establishes a rule for distributing state funds that is no rule at all."

Levy v. Parker, *supra*, 346 F.Supp. at 903.

The MFP school funding program at issue on this appeal represents a continuing intrusion of variable local assessment practices[4] into fund distributions by the State of Louisiana. Under the challenged statutory formula, the state deducts from sums budgeted for needs of each local district a sum for "support", in theory representing the district's ability to provide for its own school needs. This sum is determined predominantly by multiplying a constant factor of 5 mills times the (unequalized) *assessed* value of property situated in the district.[5] Thus, the higher a dis-

3 346 F.Supp. at 903-04.

4 In 1973, a Louisiana Court of Appeal held the variable assessment system grossly arbitrary and inequitable, in violation of federal guarantees of due process and equal protection of the laws. *Bussie v. Long*, 286 So.2d 689 (La. App. 1st Cir. 1973). The Louisiana Supreme Court denied review. 288 So.2d 354 (1974).

5 More precisely, until 1976 the state deducted the lesser of actual collections from the 5 mill tax or 90% of 5 mills times total parish assessment. Upon partial equalization of the assessment portion of the calculation, see n. 14, *infra*, the state eliminated the 90% alternative calculation. 5 mills represents the basic level of school taxation authorized by the Louisiana Constitution. Additional millage may be (and is commonly) imposed only with the approval of parish residents. Louisiana Constitution of 1974, Article VIII, Section 13(C), App. D, *infra*, pp. 21a-22a. In Orleans Parish, the basic level of taxation provided by the state constitution is 13 mills. *Id.*

trict's assessment-to-value ratio, the more the state deducts; the lower the assessment-to-value ratio, the less the state deducts.

The impact of this formula is dramatic. Jefferson Parish, which embraces the fastest growing suburbs of New Orleans, received for 1975-76, $1,474,734 per annum more than it would receive were its average assessment ratio of 6.04% of fair market value (third lowest of Louisiana's 64 parishes) restated at the statewide average of 11.39%. Urban Orleans Parish, with an average assessment ratio of 17.06% of fair market value, received from the State some $2,577,904 less for the 1975-76 school year than under an assessment-equalized funding formula. Similarly, the urban districts of Caddo Parish (Shreveport) and East Baton Rouge Parish (Baton Rouge) were short-changed by $991,069 and $720,317, respectively.

Because the statutory formula for school funding is tied directly to these variable assessment levels, which are quite distinct from property values *per se*, appellants alleged in their complaint that the statutory scheme lacked any logical or rational connection with the avowed legislative objective of correlating the level of state MFP financial assistance to a district with the district's ability to support its public education program. Appellants prayed that the three-judge court declare the Louisiana statutory scheme unconstitutional as lacking any rational basis and denying appellants the equal protection of the laws. Appellants further sought preliminary and permanent injunctions enjoining appellees, both for the 1975-76 school year and for all future years, from

deducting from local district MFP allocations any amounts based on assessed property values.[6]

Despite the prior decision in *Levy*, the District Court rejected appellants' contentions, denied all relief, and granted appellees' motion for summary judgment. Of its three and one-half page *per curiam* opinion, the court addressed only two brief paragraphs, occupying scarcely a page of the opinion, to the substance of appellants' contention that deductions from MFP funds lack any rational basis when tied to parochial assessments of property values. The District Court readily granted that "immovable property in Louisiana is not uniformly assessed with respect to its fair market value" and that "the assessed value of property, vis-a-vis its fair market value, has always varied from parish to parish." (Dist. Ct. Op., App. A, *infra*, at p. 7a). Asserting, however, that appellants were concerned only with a single year's appropriation (assertedly 1975-1976), that the 1976-77 formula utilizes partially equalized assessments, and that the new Louisiana Constitution of 1974 requires statewide equalization of assessments by January 1, 1978, the District Court concluded that the "evolving processes" of legislative change and "efforts now being made by the state" afforded the Louisiana MFP formula a rational relation to its purpose. The Court dis-

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6 Appellants asked for three alternative categories of relief: a simple pro rata deduction from each district's anticipated costs; or a deduction based on equalized assessments multiplied by 5 mills; or a deduction in a sum "determined by the Court to be fair, equitable and reasonable." (Complaint, p. 12). The District Court opinion briefly noted the complexities of the equalized form of relief (Dist. Ct. Op., App. A, *infra*, at p. 8a), but the possible complexities of equalization would not excuse the court from exploring its feasibility or the feasibility of other patterns of relief.

tinguished *Levy v. Parker, supra*, apparently on the ground that it involved a static continuing appropriation formula different from the "evolving processes" the Court saw at work here.[7]

THE QUESTION IS SUBSTANTIAL

The decision below involves a fundamental misinterpretation of this Court's decisions in *San Antonio Independent School District v. Rodriguez* and *Levy v. Parker, supra*. The *Rodriguez* decision established that a state may permit the level of funding available to a local school district to vary with the value of property located within the district.[8] The ma-

7 The District Court suggested that *Levy v. Parker* could be distinguished from the case at bar because, in *Levy*, the arbitrary distribution of state funds was coupled with a restriction on the ability of the plaintiff taxing authority (Orleans Parish) to impose additional tax burdens as a means of recouping revenues arbitrarily withheld by the state. (Dist. Ct. Op., App. A, *infra*, at p. 11a). But the taxing limitation described there was dictum, unnecessary to *Levy's* holding that the Equal Protection clause does not condone "a rule for distributing state funds that is no rule at all." *Levy v. Parker, supra*, at 903. The Court also suggested that distributions from the MFP fund are rational because 5 mills times assessed value provides a measure of school taxes *collected* by the parishes — even if variable assessments mean that collections do not precisely reflect district wealth or ability to pay. This rationale is based on a wholly erroneous factual assumption; the 1974 Louisiana Constitution (Article VIII, section 13(C), App. D, *infra*, at p. 22a) authorizes parishes to impose ad valorem school taxes in excess of 5 mills, and many parishes have done just that. Jefferson Parish, for example, in 1975 imposed an additional school tax of 31 mills, in no way taken into account in the PTR formula. (Exhibit P-11, pp. 66-67). Thus, contrary to the Court's assertion, 5 mills times assessed value does not reflect actual parish school tax collections much less any meaningful notion of ability to pay.

8 The District Court mistakenly identified appellants' claim as based on "district wealth discrimination" and devoted the bulk of its opinion to rejecting what it perceived as appellants' assault on the holding in *Rodriguez*. (Dist. Ct. Op., App. A, *infra*, pp. 8a-10a). See also pp. 15-16, *infra*.

jority in *Rodriguez* sanctioned allocations of state resources among local school districts "that [are not] so irrational as to be invidiously discriminatory." *San Antonio Independent School District v. Rodriguez, supra*, 411 U.S. at 55; *see McGinnis v. Royster*, 410 U.S. 263, 270 (1973), and cases cited.

Plainly, then, the Equal Protection Clause grants broad discretion to the states with respect to fund distributions, not "demand[ing] a surveyor's precision," *cf. Hughes v. Alexandria Scrap Corp.*, 44 U.S.L.W. 4959, ___ U.S. ___ (1976) and affording a latitude comparable to what the states possess in economic matters. At the same time, *Rodriguez* affirms that the clause *applies* to the distribution of state funds, precluding distributions that are demonstrably arbitrary. *Levy v. Parker, supra*, decided during the 1972 Term not long after *Rodriguez*, holds precisely that. There must be some reason, some "coherent governmental policy," some "discernible attempt either to classify parishes or even to deal with them on an ad hoc basis one by one" to justify disparate distributions of state funds among competing localities. *Levy v. Parker, supra*, 346 F.Supp. at 903.[9]

Levy itself presented the extraordinary case of a patently arbitrary state revenue distribution scheme. Because Louisiana's parish property assessments were grossly inconsistent, parish tax millage rates were not a plausible yardstick of tax effort or lost reve-

9 District Judge E. Gordon West dissented in *Levy v. Parker*, arguing that a State is not restricted by the Fourteenth Amendment in the manner in which it distributes funds to its political subdivisions. *Id.* at 905.

nues, and as a basis for state fund distributions, reflected no "coherent government policy." Fully sensitive to the narrow scope of review with respect to state revenue measures,[10] the District Court held that the statutory scheme in *Levy* was unconstitutional. This Court affirmed.

In the present appeal, it is the variable parish assessments themselves — one step removed even in *Levy* — to which state distributions are tied. In the present appeal, funds for education — not the general revenue disbursements of *Levy* — are at stake. Yet the District Court sustained the MFP program. Confronted with the stark fact of Louisiana's variable assessments, the millions of dollars of school aid tied to those assessments, and the controlling precedent of *Levy v. Parker*, the District Court reasoned that an arbitrary school financing formula of some twenty years' longevity possesses constitutional rationality because there is hope that the formula may be phased out in coming years.

The District Court's decision presents an important question concerning the proper relation between substantive and remedial concerns under the Equal Protection clause. While the pragmatism of the District Court may be appropriate in framing complex constitutional remedies or in this Court's exercise of its own jurisdiction, the rational relation test (however ambiguous in some instances) has never been construed to grant a District Court unbridled discretion to refuse to confront a substantial equal protection claim. The decision below elevates "prac-

10 *Id.* at 901-02.

tical considerations [that] play no role in the adjudication of . . . constitutional issues"[11] to a position of determinative constitutional force.[12]

Numerous decisions of this Court have explained that the injunctive powers of the federal courts "may be exercised 'only on the basis of a constitutional violation' " and even then that the Court must fashion "the scope of the remedy" to fit "the nature and extent of the constitutional violation." *Milliken v. Bradley*, 418 U.S. 717, 738, 744 (1974), *quoting Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 16 (1972). It is a court's duty to take exceptional care in devising and in timing constitutional remedies. *Cf. United States v. Montgomery County Board of Education*, 395 U.S. 225 (1969). According to the decision below, however, it is unnecessary even to confront those difficult remedial choices when an arbitrary state law gives some promise that it will wither away of its own accord.[13]

11 *San Antonio Independent School District v. Rodriguez*, *supra*. 411 U.S. at 58.

12 Such decisions as *Williamson v. Lee Optical Co.*, 348 U.S. 483, 489 (1955), *McDonald v. Board of Election Commissioners*, 394 U.S. 802, 809 (1969), and *Schilb v. Kuebel*, 404 U.S. 357, 364-65 (1971) establish that a legislature may create a remedial scheme that takes reform "one step at a time" and need not "cover every evil that might conceivably have been attacked." *McDonald v. Board of Election Commissioners*, *supra*, 394 U.S. at 809. But nothing in the *Williamson* line of cases suggests that a legislature is free to retain an arbitrary statutory scheme with only minor modifications simply because there is an indefinite hope of future reform.

13 *Harte v. Lennhausen*, No. 75-253, 328 N.E. 2d 543 (Ill. 1975), *cert. den.* ___ U.S. ___ (1975) involved a similar claim that locally variable property assessments do not provide a constitutional basis for school funding distributions. There, however, the Supreme Court of Illinois properly addressed the remedial difficulties of a retroactive injunction against already-completed disbursements, while facing up to the plaintiff's substantive con-

The District Court's refusal to deal meaningfully with appellants' substantive claim has had, and continues to have, adverse consequences for the taxpayers and school children of New Orleans. Contrary to the court's suggestion, appellants' complaint was not confined to "a single year's appropriation", but sought relief against application of the assessment-based formula "for the fiscal year 1975-76, and for future years". By denying appellants' request for a preliminary injunction, the District Court permitted arbitrary distribution of MFP funds for the entire school year 1975-76. By denying appellants' request for declaratory or permanent injunctive relief, the District Court decision has permitted similar distributions during the current school year, 1976-77.[14] In fact, the District Court decision may permit non-equalized distributions to continue at least through the school year 1979-80, since assessments will be

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stitutional contentions and providing relief as to uncompleted fund distributions. 328 N.E. 2d at 548. Accordingly, in *Harte* this Court had no occasion to address the issue raised on this appeal. Nor does this appeal involve the constitutionality *vel non* of allegedly discriminatory property tax assessments, as was the case in, *e.g.*, No. 75-1638, *Kell v. Chivilis, app. dismissed,* ___ U.S. ___, or *Capehart v. City of Chesapeake,* No. 75-210, *cert. den.,* ___ U.S. ___.

14 The 1976-77 support formula has been modified to equalize assessments on immovable (real) property but remains unequalized with respect to that portion of the support formula (about half) attributable to movable (personal) property. The mischief wrought by the District Court's judgment has become more evident since the Jefferson Parish School Board filed suit in a Louisiana state court to block implementation of even this modest reform. *Horne and Jefferson Parish School Board v. Louisiana State Board of Elementary and Secondary Education,* No. 197-818, Nineteenth Judicial District Court, Parish of East Baton Rouge (filed December 3, 1976).

equalized no sooner than December 31, 1977[15] and the summer legislative appropriation for the school year beginning that September typically utilizes assessments for the preceding year. Thus, the 1977-78 appropriation will utilize 1976 assessments, and the 1978-79 appropriation will use 1977 assessments.

More basically, there is no guarantee that the 1974 Louisiana Constitution will lead to reform of the unequalized assessment — based MFP program at any specific time in the foreseeable future. The 1974 Constitution requires that assessments as a percentage of fair market value be "uniform throughout the State on the same class of property",[16] and that each assessor complete new value determinations before December 31, 1977 in order to implement the requirement of uniformity.[17] But nothing in the 1974 Constitution assures systematic review of these new valuations, or requires that any review that is

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15 Thus, although the 1975-76 distribution has been completed, the case involves a continuing dispute between the parties concerning the use of non-equalized assessments in the distribution formula for at least the 1976-77, 1977-78, and 1978-79 school years, as well as appellants' possible assertion of their entitlement to reimbursement for funds attributable to 1975-76. The amount distributed by the state to the various parish school boards for a Minimum Foundation Program of Education has been reduced by a sum equal to 5 mills times the assessed value of property in each parish since the fiscal year 1956-57, and it has remained basically the same since that date. Because of the short time between refinement of the precise formula for a given year and actual distribution, completion of the 1975-76 distribution does not moot this appeal. The complained of distributions are "capable of repetition yet evading review." *Dunn v. Blumstein,* 405 U.S. 330 (1972); *Brockington v. Rhodes,* 396 U.S. 41 (1969).

16 1974 Louisiana Constitution, Article VII, Section 18(A), App. D, *infra,* at p. 18a.

17 *Id.*, Article VII, Section 23, App. D, *infra,* at pp. 20a-21a.

conducted be concluded promptly enough to bear on MFP distributions in the foreseeable future. The previous Louisiana Constitution, that of 1921, contained a provision requiring assessment at actual cash value and authorizing assessment review by a state tax commission.[18] Both provisions were officially flouted, as was a prior "comprehensive" reform statute enacted as recently as 1972, which also required assessment at actual cash value.[19] Even more fundamentally, there is not a syllable of constitutional or statutory law in Louisiana to require that MFP distributions after December 31, 1977 incorporate any reform in assessment practices that does occur. Not only then, did the District Court confuse right with remedy; it refused to rectify an immediate tangible constitutional harm by anticipating future reform that may never come to pass.

In their filings with the District Court, appellees repeatedly argued that *Rodriguez* explicitly sanctioned distributions of state funds based on variable local assessments and thus flatly disposed of the issue before the court. (*See, e.g.*, Trial Memorandum of Intervenor-Defendant Jefferson Parish School Board at pp. 6-7). The basis for these arguments was a paragraph and a footnote in the *Rodriguez* opinion in which the Court acknowledged that the disparities in school revenues raised through local district taxes were attributable not merely to inherent disparities in property values but also "in part" to "differences in

18 Louisiana Constitution of 1921, Article X, Sections 1 and 12.

19 La. Rev. Stat. 47:1957 *et seq*. For a detailed review of the abuse of these state constitutional and statutory requirements, see *Bussie v. Long*, *supra* note 4, 286 So.2d at 701-06.

the rates of taxation or in the degree to which the market value for any category of property varies from its assessed value." The footnote pointed out that statewide assessments in Texas vary from county to county. *San Antonio Independent School District v. Rodriguez, supra*, 411 U.S. at 46 & n. 100.

The quoted language, however, was only a parenthetical acknowledgment that, to some degree, differences in the amount of money raised by local school taxes in Texas were a function of local choices as to millage and assessment levels to be utilized in structuring local school taxes. Distributions of state funds were not materially determined by these variances, as is the case in Louisiana. The dissent observed as much, without contradiction by the Court.[20]

The Court in *Rodriguez* also described the computation of each district's "Local Fund Assignment", a two-step computation first derived from a "complicated economic index" at the county level and then, at the individual district level, from "each district's share of assessable property within the county." *Id.* at 10. Although the economic index included property values generally, there is no indication in the Court's opinion that this "complicated economic index" utilized *assessed* property values and certainly no hint that assessed values were a dominant factor in

20 *San Antonio Independent School District v. Rodriguez, supra.*, 411 U.S. at 74 n. 8 (dissenting opinion of Marshall, J.):

> "I believe we must deal with this case on the assumption that differences in local methods of assessment do not meaningfully affect the revenue-raising power of local districts relative to one another. The Court apparently admits as much."

determining state funding, as in Louisiana. As for the district share of each county's Local Fund Assignment, the Court referred to the district's "assessable" property, which is distinct from assessed valuation (compare the obviously contrary usage at p. 46). In any event, as among multiple districts in a given county of uniform assessments, an allocation based upon those uniform assessments surely is not dispositive of the distribution here among parishes where assessments are not uniform. The minutiae of *Rodriguez* do not, then, resolve the substantial issue raised by this appeal.

CONCLUSION

We recognize fully the District Court's reluctance to demand more than the simplest justification for a state revenue distribution scheme. Nevertheless, we suggest respectfully that the court's judgment demands not even the most basic constitutional logic to justify the Louisiana statutory scheme at issue.

For the foregoing reasons, probable jurisdiction should be noted or, alternatively, the judgment of the District Court should be reversed without plenary consideration and the cause remanded for development of an appropriate remedy.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that copies of the foregoing Jurisdictional Statement have been served upon opposing counsel of record by placing the same properly addressed in the United States Mail with adequate postage affixed thereto this ____ day of January, 1977.

Of Counsel

APPENDIX A

United States District Court
Middle District of Louisiana

SAMUEL A. SCARNATO, Individually and for and on behalf of his minor children ET AL

versus CA No. 76-45

HONORABLE MRS. MARY EVELYN PARKER, TREASURER OF THE STATE OF LOUISIANA, ET AL

JUDGMENT

This case came on for hearing of oral arguments on June 3, 1976 on Plaintiffs' Motion for a Preliminary Injunction and on the Motion of all Defendants for Summary Judgment dismissing this suit in its entirety. After oral argument, the case was submitted on stipulated facts. Now, after due consideration hereof and for written reasons to be forthwith assigned and filed in this record,

IT IS ORDERED, ADJUDGED AND DECREED that Plaintiffs' Motion for the issuance of a Preliminary Injunction be and it is hereby DENIED, and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Defendants' Motion for Summary Judgment be and it is hereby GRANTED, and this case is hereby DISMISSED.

Baton Rouge, Louisiana, June 15, 1976.

/s/ ROBERT A. AINSWORTH, JR.
Robert A. Ainsworth, Jr.
United States Circuit Judge

/s/ E. GORDON WEST
E. Gordon West
United States District Judge

/s/ ALVIN B. RUBIN
Alvin B. Rubin
United States District Judge

United States District Court
Middle District of Louisiana

SAMUEL A. SCARNATO, ET AL.
Plaintiff

versus CA No. 76-45

HONORABLE MRS. MARY EVELYN PARKER, ET AL.
Defendant

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Before AINSWORTH, Circuit Judge, and WEST and RUBIN, District Judges

PER CURIAM:

This action seeks to enjoin the enforcement of, and challenges the constitutionality of, the statutory scheme under which general revenues of the State of Louisiana are allocated to parish and city school systems in Louisiana to insure a minimum foundation program of education (MFP) in all public elementary and secondary schools. Jurisdiction of this Court is properly invoked under Title 28 U.S.C. §§1331 and 1343. Since plaintiffs seek to enjoin and restrain the enforcement of a duly enacted state statute, and certain resolutions and orders issued pursuant thereto, this statutory three-judge court was properly convened under the provisions of Title 28 U.S.C. §§2281. All of the pertinent facts have been stipulated to by all counsel, or covered by affidavits filed with the consent of all parties, and the record is complete without the necessity of further evidentiary hearing. Plaintiffs seek a preliminary injunction, and defendants seek by motion to have the case dismissed.

Article VIII, Section 13 of the 1974 Louisiana Constitution provides, in part, as follows:

"§13. Funding; Apportionment.

* * *

(B) Minimum Foundation Program. The legislature shall appropriate funds sufficient to insure a minimum foundation program of education in all public elementary and secon-

dary schools. The funds appropriated shall be equitably allocated to parish and city school systems according to formulas adopted by the State Board of Elementary and Secondary Education and approved by the legislature prior to making the appropriation.

(C) Local Funds. Local funds for the support of elementary and secondary schools shall be derived from the following sources:

First: Each parish school board, Orleans Parish excepted, and each municipality or city school board actually operating, maintaining, or supporting a separate system of public schools, shall levy annually an ad valorem maintenance tax not to exceed five mills on the dollar of assessed valuation on property subject to such taxation within the parish or city, respectively.

Second: The Orleans Parish School Board shall levy annually a tax not to exceed thirteen mills on the dollar of the assessed valuation of property within the city of New Orleans assessed for city taxation, and shall certify the amount of the tax to the governing authority of the city. The governing authority shall have the tax entered on city tax rolls. The tax shall be collected in the manner, under the conditions, and with the interest and penalties prescribed by law for city taxes. The money thus collected shall be paid daily to the Orleans Parish School Board.

Third: For giving additional support to public elementary and secondary schools, any parish, school district, or subschool district, or any municipality or city school board which supports a separate city system for public schools may levy an ad valorem tax for a specific purpose, when authorized by a majority of the electors voting in the parish, municipality, district, or subdistrict in an election held for that purpose. The amount, duration, and purpose of the tax shall be in accord with any limitation imposed by the legislature.

(D) Municipal School Systems. For the effects and purposes of this Section, the municipalities of Monroe in Ouachita Parish, and Bogalusa in Washington Parish, and no others, shall be regarded and treated as parishes and shall have the authority granted parishes.

Pursuant to this constitutional mandate the Louisiana State Board of Elementary and Secondary Education, on March 21, 1975, adopted and submitted to the Louisiana Legislature for its approval an "equalization formula" to be applied in the allocation of State general funds to the sixty-six parish and city school boards throughout the State to insure a "minimum foundation program" of education for all public elementary and secondary schools. The formula, a copy of which is attached hereto as Appendix A, was, of course, submitted without specific cost figures or final support figures filled in because those figures, which must necessarily vary from school district to

school district, have to be determined in each instance by cost figures furnished by the district involved. The "equalization formula" is exactly what it purports to be, that is, a formula to be used in order to determine the cost to each school district of a "minimum foundation program" in that district, the amount of financial support for the program that will come from the taxes and rents enumerated in the formula, and the amount of contribution from the State general fund that will be needed to make up the difference between the total cost of the program in a particular school district and the amount to be contributed to the cost by the district itself. The only part of the formula that is under attack here is the part that requires the proceeds the parish receives from the 5-mill constitutional ad valorem tax to be included in the support required from the local school district and thus to be deducted from any amount to be contributed by the State. In the formula the deduction for Orleans Parish is based on the proceeds of a 5-mill levy, the same amount deducted for other parishes. It is the plaintiffs' contention, however that since the ratio of assessment to fair market value of immovable property subject to taxation varies greatly from parish to parish in Louisiana, the deduction of the amount that would be yielded by a 5-mill levy in the "equalization formula" denies them the equal protection of the law required by the 14th Amendment of the U. S. Constitution. They also contend that the formula violates Article VIII, Section 13(B) of the 1974 Louisiana Constitution pursuant to which the formula was adopted, because it does not provide for an equitable allotment of funds as mandated by that article.

There is no dispute about the fact that immovable property in Louisiana is not uniformly assessed with respect to its fair market value. Assessors are elected public officials of each parish, and the assessed value of property, vis-a-vis its fair market value, has always varied from parish to parish. Each parish through its assessor has generally been allowed to determine the assessed value of property for tax purposes without interference from State authorities. This, of course, has resulted in property in some parishes being assessed for tax purposes at higher rates in comparison with its fair market value than property in other parishes. Property in Orleans Parish, where plaintiffs reside, and in some other urban areas, has generally been assessed at higher rates than has property in rural areas. Thus, the 5-mill tax here under attack yields more money on property located in New Orleans than on similar property with an equal fair market value located in those parishes where assessments are lower than those applied in New Orleans. As a further result, when the "equalization formula" is then applied, the contribution exacted from Orleans Parish to support its MFP is proportionately greater than that required of other parishes using lower ratios of assessment to fair market value, and hence the State's equalizing contribution to Orleans Parish will be less than it would have been had Orleans Parish used a lower assessment to fair market value ratio, such as is used in many other parishes. Plaintiffs would apparently have no complaint about this 5-mill contribution if all property in the State were valued at its fair market value and if every parish were required to use the same assessment to market value ratio for tax purposes. But, they

say, when unequal assessments are permitted, and then a uniform millage is applied to those unequal assessments and charged against the school district when equalizing funds are distributed by the State, this deprives the various school districts of equal protection of the law and penalizes those districts using a high assessment rate.

There is no evidence in the record to suggest that the plan employed discriminates in any way against any definable category of "poor people" or that it results in the deprivation of a "minimum foundation education" to any class of persons, or indeed to any individual person. It is clear from the record that the objective of the State's "Minimum Foundation Program" is being accomplished by use of the formula. The only real question is whether or not the plaintiffs have a justifiable claim based upon "district wealth discrimination".

Even if all property were assessed on a uniform basis, the parishes with relatively less valuable immovable property would contribute less to the MFP than the parishes whose residents own more valuable property. Local ability to support MFP diminishes the amount of the state contribution. If the measure of each parish's contribution were based on the total value of its immovable property, or on an assessment based on total value, the plaintiffs concede they would have no complaint. Nor do they contend that this should be accomplished. Instead they contend that some theoretical average of assessment to fair market value should be computed and applied evenly to presumed fair market value state wide. Then 5 mills of

this theoretical figure should be computed and used to measure each parish's obligation. This formula would depend on three theoretical figures, not readily susceptible of being computed, the total market value of properties, the statewide average assessment and each parish's average assessment. It would also still make each parish's average relative wealth a measure of the parish's contribution. The amount a parish actually receives from a 5 mill levy on its actual assessment is a real figure, not a hypothetical one, and it takes parochial ability to pay into account in a way that is different, but not constitutionally invalid.

In San Antonio Independent School District, Et Al. v. Rodriguez, 93 S. Ct. 1278, 411 U. S. 1, 36 L. Ed. 2d 16 (1973), as in the present case, the financing of public elementary and secondary schools was a product of State and local participation. Each Texas school district was required to supplement State aid through an ad valorem tax on property within its jurisdiction. The ad valorem tax assessed for school purposes produced more revenues in some districts than in others, resulting in some districts having to contribute more local funds to the Minimum Foundation Program than other districts. The differences in productivity of the ad valorem taxes resulted in different amounts of equalizing funds being contributed to the different school districts by the State.

In considering the alleged denial of equal protection in violation of the Fourteenth Amendment, the Court said:

> It has simply never been within the constitutional prerogative of this Court to nullify

> statewide measures for financing public services merely because the burden or benefits thereof fall unevenly depending upon the *relative wealth of the political subdivisions* in *which citizens live*. In sum, to the extent that the Texas system of school financing results in unequal expenditures between children who happen to reside in different districts, we cannot say that such disparities are the product of a system that is so irrational as to be invidiously discriminatory. 93 S. Ct. at 1307-8.

Just as was the Supreme Court in *Rodriguez*, so are we, " — unwilling to assume for ourselves a level of wisdom superior to that of legislators, scholars, and educational authorities in fifty States, especially where the alternatives proposed are only recently conceived and nowhere yet tested. The Constitutional standards under the Equal Protection Clause is whether the challenged State action rationally furthers a legitimate State purpose or interest." Ibid.

In determining whether the rational relationship test has been met we also take into account that the plaintiffs here seek to reopen only one part of a single year's appropriation, based on a formula effective for only one year; the proposed formula for 1976-77 takes into account a partial equalization of the kind here sought; the Louisiana Constitution adopted in 1974, requires uniform statewide assessment, Art. 7, § 18(A), and a study designed to accomplish its mandate is now under way, see Executive Order 76-2. We do not have here as in Levy v. Parker, E.D.La. 1972, 346 F. Supp. 896, on which plaintiffs rely, the combination of une-

qual assessments, limitations on the taxing power of a local government, and payment of state revenues to localities that there composed "the cumulative thrust of Louisiana's trident of constitution and statute" found to be invalid. 346 F. Supp. at 904. We were careful there to distinguish appropriations "not based on a continuing formula," and we pointed out that the assessment policies there considered did not alone deny equal protection.

Considering the entirety both of the Louisiana MFP program and the other efforts now being made by the state, the state's formula for 1975-76 appears at this time to be rationally related to its purpose. The state is pursuing studies in an effort to fulfill the state's own constitutional mandate to achieve equal assessment. It is modifying its formula for parochial contributions to the MFP program. These are still evolving processes. At this time, no denial of equal protection has been shown, and we heed the Supreme Court's admonition,

> The consideration and initiation of fundamental reforms with respect to state taxation and education are matters reserved for the legislative processes of the various States, and we do no violence to the values of federalism and separation of powers by staying our hand. 93 S. Ct. at 1309.

Since we find no violation of the equal protection clause of the federal constitution, we feel it is wiser to also dismiss the pendent claim asserted under the Louisiana constitution.

Needless decisions of state law should be avoided both as a matter of comity and to promote justice between the parties, by procuring for them a surer-footed reading of applicable law. United Mine Workers of America v. Gibbs, 1966, 87 S. Ct. 1130, 1139.

For these reasons the plaintiffs' request for a preliminary injunction will be denied and the defendants' motion for summary judgment dismissing this suit in its entirety will be granted.

/s/ ROBERT A. AINSWORTH
UNITED STATES
CIRCUIT JUDGE

/s/ E. GORDON WEST
UNITED STATES
DISTRICT JUDGE

/s/ ALVIN A. RUBIN
UNITED STATES
DISTRICT JUDGE

[APPENDIX TO COURT'S OPINION]

EQUALIZATION FORMULA
1975-1976 SCHOOL YEAR — CURRENT BASIS

I. *Cost of Minimum Foundation Program* (For a full nine-month session, based on membership and other current data at first reporting period 1975-1976)

1. Teachers allotted and employed (Teachers and principals — regular and special education) Number X actual salary according to State Minimum Salary Schedule .. $ _____

2. Special Education Teacher Aides — Number allotted and employed X actual salary to $2,-900 ..... $ _____

3. Supervisors of Instruction — Number allotted and employed X 12/9 of State salary for teacher with a Master's degree and maximum experience ..... $ _____

4. Visiting Teachers — Number allotted and employed X 12/9 of State salary for teacher with a Master's degree and maximum experience ..... $ _____

5. Transportation — Actual cost of approved routes, based on State bus operators' salary schedule, and allowance up to $1,785 for special education bus attendants .. $ _____

6. Mandated Costs — State's share (57%) of costs for sabbatical leave, substitute teachers, and accumulated sick leave severance pay ..... $ _____

7. Salary Adjustments for Other School Employees — Cost-of-living increases for school employees who are not governed by a State minimum salary (any new appropriation distributed on basis of number of teachers allotted and employed, and appropriations existing prior to 1/1/75 distributed one-half as in past and one-half on basis of teachers allotted and employed) .
$ _____

8. Other Cost — including general control, teaching materials and supplies, operation and maintenance of plant, fixed charges and auxiliary agencies other than transportation. Student membership at first reporting period X $48 ..... $ _____

Total Cost of Minimum Foundation Program ..... $ _____

II. *Support for the Minimum Foundation Program* (Based on estimated current revenues for 1975-1976)

1. Parish 5-Mill Constitutional Tax (Net collections by school board or 90% of 5-mills of parish assessment, whichever is smaller $ _____

2. Severance Tax* — School board's share of severance tax proceeds returned to parish of origin ..... $ _____

3. Rent or Lease of School Lands — 50% of total collections, except as otherwise provided in House Bill 180 by Mr. LeBleu of the 1975 Regular Session if House Bill 180 is enacted into law ..... $ _____

Total Support for Minimum Foundation Program ..... $ _____

III. *Difference Necessary to Equalize* $ _____

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* inclusion as a support factor dependent upon forthcoming court ruling as to whether or not school boards are to share in severance tax proceeds under new Constitution.

/s/ JAMES E. FITZMORRIS, JR.
LIEUTENANT GOVERNOR
AND
PRESIDENT OF THE SENATE

/s/ E. L. HENRY
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

APPENDIX B

United States District Court
Middle District of Louisiana

MINUTE ENTRY:
SEPTEMBER 9, 1976
WEST, J.

SAMUEL A. SCARNATO, Individually and for and on behalf of his minor children, et al

versus CA No. 76-45

HONORABLE MRS. MARY EVELYN PARKER, TREASURER OF THE STATE OF LOUISIANA, et al,

This case is before the Court on plaintiffs' motion for a new trial. Briefs have been filed, and after due consideration thereof, the Court concludes that no oral

argument is needed. As appears from the record in this case, all essential facts were stipulated to by all counsel prior to oral argument held on June 3, 1976. At that time, the case was before the Court on plaintiffs' motion for a preliminary injunction and on the motions of all defendants for summary judgment dismissing the suit in its entirety. On June 15, 1976, for written reasons assigned and filed in the record, judgment was entered denying plaintiffs' motion for a preliminary injunction and granting defendants' motions for summary judgment, and thus dismissing the suit in its entirety. Counsel for plaintiffs now contends that the Court had before it only the request for a preliminary injunction and that therefore plaintiffs should now be heard on their request for a permanent injunction and a declaratory judgment. But the granting of defendants' motions for summary judgment was dispositive of the entire case. As previously stated, the Court did have before it the motions of all defendants for summary judgment, and all pertinent facts had been stipulated to. The motions for summary judgment were granted for the reasons previously assigned, and the case was dismissed on its merits. Now, after a review of the record once again, the Court finds no merit to the specification of errors contained in plaintiffs' motion for a new trial. Therefore:

IT IS ORDERED that plaintiffs' motion for a new trial be, and it is hereby DENIED.

/s/ ROBERT A. AINSWORTH, JR.
ROBERT A. AINSWORTH, JR.
UNITED STATES
CIRCUIT JUDGE

/s/ E. GORDON WEST
E. GORDON WEST
UNITED STATES
DISTRICT JUDGE

/s/ ALVIN B. RUBIN
ALVIN B. RUBIN
UNITED STATES
DISTRICT JUDGE

APPENDIX C

United States District Court
Eastern District of Louisiana

SAMUEL A. SCARNATO, Individually and for and on behalf of his minor children, et al

versus CA No. 76-45

HONORABLE MRS. MARY EVELYN PARKER, TREASURER OF THE STATE OF LOUISIANA, et al

NOTICE OF APPEAL TO THE
SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Samuel A. Scarnato, Mrs. Maryellen Hamilton, Mrs. Ethel Griffin, George H. Hoag, and Matthew Proctor, Jr., each appearing individually as well as for and on behalf of his minor children, and the Orleans Parish School Board, plaintiffs in the above-named action, hereby appeal to the Supreme Court of the United States from the judgment dismissing the complaint in this action and entered on June 15, 1976, which judgment became final on

September 9, 1976 upon entry of the Court's denial of plaintiffs' motion for a new trial.

This appeal is taken pursuant to 28 U.S.C. §1253.

Samuel I. Rosenberg
Of
Polack, Rosenberg,
Rittenberg, & Endom
1006 Hibernia Bank Building
New Orleans, Louisiana 70112
Telephone: (504) 581-1422

Attorneys for Plaintiffs

[Filed: October 29, 1976]

APPENDIX D

LOUISIANA CONSTITUTION OF 1974
ARTICLE VII

PART II. PROPERTY TAXATION

§ 18. Ad Valorem Taxes

Section 18. (A) Assessments. Property subject to ad valorem taxation shall be listed on the assessment rolls at its assessed valuation, which, except as provided in Paragraph (C), shall be a percentage of its fair market value. The percentage of fair market value shall be uniform throughout the state upon the same class of property.

(B) Classification. The classifications of property subject to ad valorem taxation and the percentage of

fair market value applicable to each classification for the purpose of determining assessed valuation are as follows:

Classifications	Percentages
1. Land	10%
2. Improvements for residential purposes	10%
3. Other property	15%

(C) Use Value. Bona fide agricultural, horticultural, marsh, and timber lands, as defined by general law, shall be assessed for tax purposes at ten percent of use value rather than fair market value. The legislature may provide by law similarly for buildings of historic architectural importance.

(D) Valuation. Each assessor shall determine the fair market value of all property subject to taxation within his respective parish or district except public service properties, which shall be valued at fair market value by the Louisiana Tax Commission or its successor. Each assessor shall determine the use value of property which is to be so assessed under the provisions of Paragraph (C). Fair market value and use value of property shall be determined in accordance with criteria which shall be established by law and which shall apply uniformly throughout the state.

(E) Review. The correctness of assessments by the assessor shall be subject to review first by the parish governing authority, then by the Louisiana Tax Commission or its successor, and finally by the courts, all in accordance with procedures established by law.

(F) Reappraisal. All property subject to taxation shall be reappraised and valued in accordance with this Section, at intervals of not more than four years.

* * *

§ 23. Adjustment of Ad Valorem Tax Millages

Section 23. Prior to the end of the third year after the effective date of this constitution, the assessors and the Louisiana Tax Commission or its successor shall complete determination of the fair market value or the use value of all property subject to taxation within each parish for use in implementing this Article. Except as provided in this Paragraph, the total amount of ad valorem taxes collected by any taxing authority in the year in which Sections 18 and 20 of this Article are implemented shall not be increased or decreased, because of their provisions, above or below ad valorem taxes collected by that taxing authority in the year preceding implementation. To accomplish this result, it shall be mandatory for each affected taxing authority, in the year in which Sections 18 and 20 of this Article are implemented, to adjust millages upwards or downwards without regard to millage limitations contained in this constitution, and the maximum authorized millages shall be increased or decreased, without further voter approval, in proportion to the amount of the adjustment upward or downward. Thereafter, such millages shall remain in effect unless changed as permitted by this constitution. Nothing herein shall prohibit a taxing authority from collecting, in the year in which Sections 18 and 20 of this Article are implemented or in any subsequent

year, a larger dollar amount of ad valorem taxes by (a) levying additional or increased millages as provided by law; (b) placing additional property on the tax rolls; or (c) increases in the fair market or use value of property after the first determination of that value to implement this Article. This Section shall not apply to millages required to be levied for the payment of general obligation bonds.

LOUISIANA CONSTITUTION OF 1974
ARTICLE VIII

§ 13. Funding; Apportionment

Section 13. . . .

(B) Minimum Foundation Program. The legislature shall appropriate funds sufficient to insure a minimum foundation program of education in all public elementary and secondary schools. The funds appropriated shall be equitably allocated to parish and city school systems according to formulas adopted by the State Board of Elementary and Secondary Education and approved by the legislature prior to making the appropriation.

(C) Local Funds. Local funds for the support of elementary and secondary schools shall be derived from the following sources:

First: Each parish school board, Orleans Parish excepted, and each municipality or city school board actually operating, maintaining, or supporting a separate system of public schools, shall levy annually an ad valorem maintenance

tax not to exceed five mills on the dollar of assessed valuation on property subject to such taxation within the parish or city, respectively.

Second: The Orleans Parish School Board shall levy annually a tax not to exceed thirteen mills on the dollar of the assessed valuation of property within the city of New Orleans assessed for city taxation, and shall certify the amount of the tax to the governing authority of the city. The governing authority shall have the tax entered on city tax rolls. The tax shall be collected in the manner, under the conditions, and with the interest and penalties prescribed by law for city taxes. The money thus collected shall be paid daily to the Orleans Parish School Board.

Third: For giving additional support to public elementary and secondary schools, any parish, school district, or subschool district, or any municipality or city school board which supports a separate city system of public schools may levy an ad valorem tax for a specific purpose, when authorized by a majority of the electors voting in the parish, municipality, district, or subdistrict in an election held for that purpose. The amount, dura ion, and purpose of the tax shall be in accord with any limitation imposed by the legislature.

(D) Municipal School Systems. For the effects and purposes of this Section, the municipalities of Monroe in Ouachita Parish, and Bogalusa in Washington Parish, and no others, shall be regarded and treated as parishes and shall have the authority granted parishes.

* * *

State of Louisiana
Board of Elementary and Secondary Education
Baton Rouge 70804

May 18, 1976

The Louisiana State Board of Education meeting in regular session March 20-21, 1975, took the following action:

"On motion of Mr. Whetstone, seconded by Mr. Nix, the Board ratified the Minimum Foundation Program Equalization Formula, as submitted by the State Department of Education, contingent upon the approval of the Attorney General." (Schedule 75)

I hereby certify that the foregoing is a true and correct excerpt from the Minutes of the Louisiana State Board of Education, March 20-21, 1975.

/s/ J. KELLY NIX
J. Kelly Nix
Ex Officio Secretary

/s/ A. J. "SOOKIE" ROY
President, State Board of Elementary and Secondary Education

* * *

ESSENTIAL ELEMENTS OF MINIMUM FOUNDATION PROGRAM EQUALIZATION FORMULA IN LOUISIANA

[attachment to Minutes of March 20-21, 1975]

The minimum foundation program equalization distribution is based on a formula which allows to each parish and city school board the difference between its cost of operating a minimum foundation program of education and the ability of the local system to support the program.

The Cost division of the formula includes: (1) Salaries of Teachers; (2) Supervisors of Instruction; (3) Visiting Teachers; (4) Special Education Teacher Aides; (5) School Bus Transportation; (6) Other Cost — a flat amount per student ($48 in 1974-75) to provide state aid for general control, teaching materials and supplies, operation and maintenance of plant, fixed charges and auxiliary agencies other than transportation; (7) state support for mandated costs, including sabbatical leave pay, substitute teachers, and accumulated sick leave severance pay; and (8) Cost of Living salary adjustments for school lunch employees, administrative and other personnel who are not covered by a state minimum salary schedule.

The Support division of the formula consists of: (1) the State Per Educable distribution; (2) the parish 5-mill Constitutional Tax (net amount collected or 90% of 5 mills of the assessment, whichever is smaller); (3) the local school board's share of severance tax proceeds which are returned to the parish of origin;

and (4) Rent or Lease of school lands (50% of total collected). The Per Educable distribution will no longer be a factor after the 1974-75 fiscal year, as the new Constitution provides that all minimum foundation program funds be distributed on the basis of equalization. After December 31, 1974, participation of parish school boards in severance tax allocations is dependent on a forthcoming court ruling on provisions of the new Constitution regarding the distribution of severance tax proceeds that are returned to the parish of origin.

The final division of the equalization formula reflects the difference between the total cost of the minimum education program for each parish and city school system and the amount of support which each school board can generate for subsidizing the program, and is referred to as the difference necessary to equalize . . .

* * *

Regular Session, 1975
SENATE CONCURRENT RESOLUTION NO. 10
BY MR. MOUTON AND REPRESENTATIVE WARES
[June 17, 1975]

A CONCURRENT RESOLUTION

To provide for the approval by the legislature of the formula adopted by the State Board of Elementary and Secondary Education for the equitable allocation of funds sufficient to insure a minimum foundation program of education in all public elementary and secondary schools.

WHEREAS, in its meeting on March 21, 1975, the State Board of Elementary and Secondary Education adopted a formula for the equitable allocation of funds; and

WHEREAS, Article VIII, Section 13(13) of the Constitution requires the legislature to approve the formulas adopted by the State Board of Elementary and Secondary Education which provide for the equitable allocation of funds to the school systems; and

WHEREAS, that constitutional provision requires the legislature to approve the formula prior to making the appropriation of funds sufficient to insure a minimum foundation program of education; and

WHEREAS, it is necessary that the legislature approve this formula as soon as possible.

THEREFORE, BE IT RESOLVED by the Senate of the Legislature of Louisiana, the House of Representatives thereof concurring, that the minimum foundation program equalization formula adopted by the State Board of Elementary and Secondary Education on March 21, 1975, is hereby approved . . .: [For text of formula see Dist.Ct.Op., App. A, *supra*].

* * *

Regular Session 1975
HOUSE BILL NO. 1627 [ACT 16 of 1975]
BY MR. REILLY, CHAIRMAN, HOUSE COMMITTEE ON APPROPRIATIONS
(SUBSTITUTE FOR H.B. 363 BY MR. REILLY)
[August 5, 1975]

AN ACT

Making appropriations for the ordinary expenses of the state government, pensions, public schools, public roads, public charities, and state institutions

and providing with respect to the expenditure of said appropriation.

Be it enacted by the Legislature of Louisiana: . . .

05 STATE GENERAL FUND MINIMUM FOUNDATION PROGRAM EQUALIZATION DISTRIBUTION:
To provide a minimum program of education for all children in the public schools in the state, including the payment of teachers' salaries and bus operators' salaries in accordance with full implementation of Act 27 E.S. 1964 and Act 28 E.S. 1964, and Act 397 of 1968, respectively, by applying the formula as presently approved by the State Board of Education and the legislature; . . .

TOTAL: $533,104,835.

* * *

State of Louisiana
Board of Elementary and Secondary Education
Baton Rouge 70804
September 2, 1976

Mr. Jack A. Grant
Grant and Barrow
220 Lavoisier Street
Gretna, LA 70053

Dear Mr. Grant:

The Louisiana State Board of Elementary and Secondary Education, meeting in regular session on April 22, 1976, took the following action:

"On motion of Mr. Watkins, seconded by Mr. Bankston, the Board approved Item I, Cost of the Minimum Foundation Program, for 1976-77."

(Schedule 66)

"Mr. Watkins offered a motion, seconded by Mr. Bankston, to approve Item II, Support for the Minimum Foundation Program, with the Alternate Equalized Charge-Back of the proposed changes in 5-Mill charge-back."

(Schedule 66)

"Mr. Watkins' motion passed with the following roll call vote:"

YEAS: Bankston, Bopp, Castille, Davis, Fourrier, Reeds, Watkins
NAYS: Hunter, Lombard
ABSENT: Roy, Snellings

"On motion of Mr. Watkins, seconded by Mr. Bankston, the Board adopted Item III, Difference Necessary to Equalize, of the Minimum Foundation Program for 1976-77."

(Schedule 66)

I certify that the foregoing is a true and correct copy of an official excerpt from the Minutes of the State Board of Elementary and Secondary Education for April 22, 1976.

/s/ A. J. ROY, JR.
A. J. Roy, Jr., President

/s/ J. KELLY NIX
J. Kelly Nix, Ex-Officio
Secretary

EI:lab
Attachment

EQUALIZATION FORMULA
1976-77 SCHOOL YEAR — CURRENT BASIS

I. *Cost of Minimum Foundation Program* (For a full nine-month session, based on membership and other current data at first reporting period 1976-77)

1. Teachers allotted and employed (Teachers and principals — regular and special education) Number X actual salary according to State Minimum Salary Schedule ..... $ _____

2. Special Education Teacher Aides — Number allotted and employed X actual salary to $3,045 ..... $ _____

3. Supervisors of Instruction — Number allotted and employed X 12/9 of State salary for teacher with a Master's degree and maximum experience ..... $ _____

4. Visiting Teachers — Number allotted and employed X 12/9 of State salary for teacher with a Master's degree and maximum experience ..... $ _____

5. Transportation — Actual cost of approved routes, not including transportation for college and university students, based on

State bus operators' salary schedule, and allowance up to $1,874 for special education bus attendants ..... $ _____

6. Mandated Costs — State's share (57%) of costs for sabbatical leave, substitute teachers, accumulated sick leave severance pay, and workmen's compensation ..... $ _____
7. Salary Adjustments for Other School Employees — Cost of living increases for school employees, not including school lunch employees, who are not governed by a State minimum salary schedule (distributed on basis of number of teachers allotted and employed) ..... $ _____
8. Other Costs — including general control, teaching materials and supplies, operation and maintenance of plant, fixed charges and auxiliary agencies other than transportation. Student membership at first reporting period X $48 $ _____

Total Cost of Minimum Foundation Program ..... $ _____

II. *Support for the Minimum Foundation Program* (Based on estimated current revenues for 1976-77)

1. Parish 5-Mill Constitutional Tax on Equalized Assessment basis less commissions and deductions ..... $ _____

1a. State Revenue Sharing Funds Attributable to Parish 5-Mill Constitutional Tax ..... $ _____

Total Support for Minimum Foundation Program ..... $ _____

III. Difference Necessary to Equalize ..... $ _____

Explanatory Notes on Formula

SUPPORT OF PROGRAM

1. Parish 5-Mill Constitutional Tax: The amount charged against parish and city school boards for the 5-Mill Constitutional Tax shall be based on equalized assessments for real estate not subject to homestead exemptions, plus the actual assessments for personal property and public service corporations, less commissions and deductions.

1a. State Revenue Sharing Funds Attributable to Parish 5-Mill Constitutional Tax: Parish and city school boards shall be charged in the Support Program with the net amount receivable from Revenue Sharing funds to offset homestead exemptions on that portion attributable to the 5-Mill Constitutional Tax.

* * *

Regular Session, 1976

SENATE CONCURRENT RESOLUTION NO. 89

BY MESSRS. MOUTON AND WILLIAMSON AND REPRESENTATIVES A. JACKSON AND J. JACKSON

[July 16, 1976]

A CONCURRENT RESOLUTION

To provide for the approval by the legislature of the formula adopted by the State Board of Elementary

and Secondary Education for the equitable allocation of funds sufficient to insure a minimum foundation program of education in all public elementary and secondary schools.

WHEREAS, in its meeting on April 22, 1976, the State Board of Elementary and Secondary Education adopted a formula for the equitable allocation of funds; and

WHEREAS, Article VIII, Section 13(B) of the Constitution requires the legislature to approve the formulas adopted by the State Board of Elementary and Secondary Education which provide for the equitable allocation of funds to the school systems; and

WHEREAS, that constitutional provision requires the legislature to approve the formula prior to making the appropriation of funds sufficient to insure a minimum foundation program of education; and

WHEREAS, it is necessary that the legislature approve this formula as soon as possible.

THEREFORE, BE IT RESOLVED by the Senate of the Legislature of Louisiana, the House of Representatives thereof concurring, that the minimum foundation program equalization formula adopted by the State Board of Elementary and Secondary Education on April 22, 1976, is hereby approved . . .

* * *

Regular Session, 1976

HOUSE BILL NO. 154 [Act 17 of 1976]

BY MR. REILLY, CHAIRMAN, HOUSE COMMITTEE ON APPROPRIATIONS AND MESSRS. CHABERT, CHARBONNET, R. LABORDE AND VIDRINE

[July 20, 1976]

AN ACT

Making appropriations for the ordinary expenses of the state government, pensions, public schools, public roads, public charities, and state institutions and providing with respect to the expenditure of said appropriation, and to otherwise provide with respect thereto.

Be it enacted by the Legislature of Louisiana: . . .

19-70-03-05 STATE GENERAL FUND MINIMUM FOUNDATION PROGRAM EQUALIZATION DISTRIBUTION:

To provide a minimum program of education for all children in the public schools in the state including the payment of teachers' salaries and bus operators' salaries in accordance with full implementation of Act 27 E.S. 1964 and Act 28 E.S. 1964, and Act 397 of 1968 respectively, by applying the formula as presently approved by the State Board of Education and the Legislature; . . .

TOTAL: $540,638,308